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No.

IN THE

Supreme Court Of The United States

BARBARA GRASSINI, Petitioner,

vs.

DUPAGE TOWNSHIP, a Municipal Corporation, MARGARET DANHOF, Township Supervisor, ANN DRALLE, Trustee, FELIX GEORGE, Trustee, PAUL DRDAK, Trustee, JEFF MERTZ, Trustee, and JUDITH BREDEWEG

ON A PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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68 pp

QUESTIONS PRESENTED

Barb Grassini worked for DuPage Township as its chief administrator. After a new political regime was elected, Barb Grassini was fired. Subsequently, Barb Grassini advised township officials that she intended to file suit. As a result, township officials issued an edict banning Barb Grassini from township property for any "paid or volunteer activity held on DuPage Township Property" pending the outcome of the litigation. In denying Barb Grassini's petition for leave to appeal, the Illinois Supreme Court affirmed the Third District Appellate court's holding that Barb Grassini failed to state a cause of action in her Section 1983 civil rights claim.

1. Whether the DuPage Township's directive banning Barbara Grassini from DuPage Township property during the pendency of her litigation and its enforcement by township officials deprived Barbara Grassini of her First Amendment and Fourteenth Amendment rights actionable under 42 U.S.C. 1983.

2. Whether Barbara Grassini sufficiently alleged a cause of action under 42 U.S.C. 1983 for violation of her First and Fourteenth Amendment rights.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	14
APPENDIX	15-64

TABLE OF AUTHORITIES

CASES: Page

Board of Regents v. Roth, 408 U.S. 564, 477, 92 S. Ct. 2701, 2709, 33 L. Ed. 2d 548 (1972) 9

Leatherman v. Tarrant County, 113 S. Ct. 1160, 1163 (1994) 12

Memphis Community School District v. Stachura, 106 S. Ct. 2537 (1986) 11

Monell v. Department of Social Services, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed 611(1978) 8, 9

N.A.A.C.P. v. Button, 83 S. Ct. 328, 338 (1963) 11

Perry v. Sindermann, 408 U.S. 7, 25, 601, 92 S. Ct. 2594, 1699, 33 L. Ed. 570, 574(1972) 9

Esmail v. McCrane 52 F.3d 176 (7th Cir. 1995) at 179-180 ..... 8, 12, 14

CONSTITUTION AND STATUTES:

First Amendment of the United States Constitution ..... i, 3, 5, 6, 7, 8, 9, 11

Fourteenth Amendment of the United States Constitution ..... i, 3, 5, 6, 7, 9

U.S.C. 42, Section 1983 ..... i, 3, 6, 8, 9, 12

28 U.S.C. Section 1257 2

Section 60 of the Illinois Revised Statutes 1/150-60 (West 1996) 3, 9

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

The opinion of the Third District Court of Appeals of Illinois is unpublished and not reported. This opinion appears at Appendix 38-52. The Illinois Supreme Court denied the Petitioner's Petition for Leave to Appeal on October 6, 1999, without opinion. This order appears at Appendix 16.

JURISDICTION

The Illinois Supreme Court entered its order denying Petitioner's request for leave to appeal on October 6, 1999. The jurisdiction of this court is invoked under 28 U.S.C. Section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. First Amendment and Fourteenth Amendment.

2. 42 U.S.C. Section 1983.

3. Section 60 of Illinois Revised Statutes 1/150-60 (West 1996).

   Sec. 150-60. Use of buildings; private lessees. Subject to the reasonable rules and regulations of the board of managers, the community buildings shall be for the free use and benefit of the inhabitants of the township for lectures, concerts, free amusements and entertainments, and all other general education purposes. The annual township meetings and other public assemblies may be held in the buildings. The board of managers may temporarily lease the community building when not in use for public purposes, for any reasonable and legitimate private use on terms deemed reasonable and proper. Private lessees of a community building may charge admission fees. All money received from temporary rentals shall be turned over to the treasurer and shall be used only for community building purposes.

STATEMENT

Petitioner was the DuPage Township Administrator.(A-40) The Respondent, DuPage Township, is a local governmental municipality in Will County/DuPage County, Illinois.(A-55)

In 1988, Barbara Grassini started her employment with DuPage Township, as an assistant.(A-19) In February, 1993, Barbara Grassini entered into a written employment contract with the township through which she agreed to serve in the capacity as township administrator for a four year period.(A-20) As administrator, Barbara Grassini performed various duties under the direction of the township supervisor, including coordination of township's daily business, coordination of payroll and personnel functions, recommendation of budgetary policies, and communications of township policies to departmental heads.(A-20)

Throughout her tenure as a township employee, Barb Grassini was involved in a variety of township political, social and volunteer activities.(A-57-58) As the complaint shows, for fifteen years Barbara Grassini organized, ran and volunteered at senior citizens functions and events throughout DuPage Township, often held on DuPage Township property. Also, over those same fifteen years, Barb Grassini regularly attended township meetings on township property.(A-58)

In April, 1993, a new supervisor and board of trustees was elected.(A-20) On May 5, 1993, new trustees voted to terminate Barb Grassini's contract and to discharge Grassini from her duties.(A-20)

Subsequently, Grassini told the township officials that

she thought her employment was wrongly terminated and threatened suit. In anticipation of litigation, the new township supervisor issued the following memo:

> Memo to Office Staff of DuPage Township
>
> From: Supervisor Danhof/Transition Team Lead Bredeweg
> Subject: Barbara Tuttle-Grassini
>
> Date: June 11, 1993
>
> On advice from the township attorney who as been informed that a lawsuit will be filed against the township supervisor and board of trustees by Barbara Tuttle-Grassini, effective June 11, 1993, Barbara Tuttle-Grassini is not allowed to participate in any paid or volunteer activity held on DuPage Township property. This memo will be in effect until all litigation has been resolved.(A-62)

Originally, Barbara Grassini brought a six count complaint against the township, its trustees, and the new supervisor.(A-21) Several of those counts involved contract issues.(A-21) In Count VI, Grassini sought damages under 42 U.S.C., Section 1983 for interference with her rights under the First and Fourteenth Amendment to the United States Constitution stemming from the memo.(A-21)

The trial court dismissed her entire complaint on the pleadings and she appealed.(A-21) The Third District

Appellate Court reversed only Count VI and gave Grassini the opportunity to amend.(A-34) Grassini filed her amended complaint.(A-54) Once again, she claimed damages under 42 U.S.C., Section 1983 for violation of her rights under the First and Fourteenth Amendments to the United States Constitution as a result of the memo.(A-55) This time, Grassini included very specific allegations about how she was damaged, what rights were violated, and how they were violated. (A-56-59) In addition, Grassini attached exhibits to the complaint showing that the memo was disseminated to the public, especially the senior citizens and an affidavit stating that Grassini was told by a township staff secretary that if she tried to enter township property she would be stopped.(A-63,64)

Once again, the trial court dismissed Grassini's complaint.(A-39) Again, Grassini appealed. This time the Third District Appellate Court affirmed saying that Grassini did not sufficiently allege a cause of action under 42 U.S.C., Section 1983.(A-39,52) In essence, the Appellate Court found that Grassini never suffered any "actual deprivation" of her rights, because Grassini was never physically stopped from entering township property by township officials.(A-52)

The petitioner filed her petition for leave to appeal to the Supreme Court of Illinois. In her brief, Grassini argued that she stated a claim under 42 U.S.C., Section 1983, and that her First and Fourteenth Amendment rights were violated as a result of the memo. On October 6, 1999, the Supreme Court of Illinois denied her petition.(A-16)

REASONS FOR GRANTING THE WRIT

The argument for review is simple, and yet, it involves substantial issues. As to the merits, petitioner's argument is based largely on the memo itself. It bears repeating.

> Memo to Office Staff of DuPage Township
>
> From: Supervisor Danhof/Transition Team Lead Bredeweg
>
> Subject: Barbara Tuttle-Grassini
>
> Date: June 11, 1993
>
> On advice from the township attorney who has been informed that a lawsuit will be filed against the township supervisor and board of trustees by Barbara Tuttle-Grassini, effective June 11, 1993, Barbara Tuttle-Grassini is not allowed to participate in any paid or volunteer activity held on DuPage Township property. This memo will be in effect until all litigation has been resolved.

It is obvious that this memo is a spiteful effort to "get" Barb Grassini, for reasons wholly unrelated to any legitimate state objective. The only thing she did wrong was to disagree with a new political regime. Our founding fathers wrote the constitution, particularly the First and Fourteenth Amendment to protect harmless individuals like Barb Grassini from the terribly abusive misuse of local governmental power which occurred in this case. To paraphrase the Seventh Circuit Court

of Appeals ... [If] the power of government is brought to bare on a harmless individual merely because powerful state or local official[s] harbor a malignant animosity toward him [or her], the individual ought to have a remedy... **Esmail v. McCrane** 52 F.3d 176 (7th Cir. 1995) at 179-180. The Illinois courts were clearly wrong in protecting the township and its officials by saying that Barb Grassini did not state a cause of action in her complaint under 42 U.S.C., Section 1983.

I. THE DECISION BELOW SQUARELY CONFLICTS WITH THIS COURT'S DECISIONS.

This court in **Monell v. Department of Social Services**, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed 611 established the principle that the enforcement of an unconstitutional policy by governmental authorities is actionable through 42 U.S.C. Section 1983. The Illinois courts ignored this opinion by ruling that the unconstitutional policy expressed in the township's memo was not actionable under 42 U.S.C. Section 1983.

In Paragraph 13 and 14 of her complaint, Grassini specifically sets out how the township enforced this unconstitutional policy. Once again, this court held in **Monell v. Department of Social Services**, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed 611, that the enforcement of such unconstitutional policy by a local governmental authority is actionable under 42 U.S.C. Section 1983. Again, the Illinois courts ignored this opinion by finding that the township's enforcement of the memo was not actionable.

Furthermore, in Paragraph 19 of Plaintiffs complaint,

she plainly and specifically alleges that her First Amendment and Fourteenth Amendment rights were violated as a result of the memo. This court in **Monell v. Department of Social Services**, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed 611 (1978), found that a violation of these rights may be redressed through 42 U.S.C. Section 1983.

Moreover, Grassini alleged in her complaint that her Fourteenth Amendment rights were violated. She argued in the Appellate Court and the Trial Court that she was "entitled" to use and enjoy township public property like any other citizen under 60 ILCS 1/150-60. This court in **Board of Regents v. Roth**, 408 U.S. 564, 477, 92 S. Ct. 2701, 2709, 33 L.Ed.2d 548 (1972) and **Perry v. Sindermann**, 408 U.S. 7, 25, 601, 92 S. Ct. 2594, 1699, 33 L. Ed. 570, 574 (1972), established that municipalities cannot take away a citizen's statutory entitlement without due process. The Illinois courts once again ignored these opinions by ruling that the township's banning of Grassini from township property was not a violation of her Fourteenth Amendment Procedural and Substantive Due Process rights.

In addition, Grassini plainly and specifically alleges how and what First Amendment rights were violated in Paragraphs 13, 15, 16, 17, and 18 of her complaint.

> 13. The Defendant, DUPAGE TOWNSHIP, acting through its Trustees, employees and agents, and Trustees, employees, and agents of the Township individually, intended to enforce the above referenced directive, to not allow BARBARA GRASSINI onto any Township property. The

Township in fact enforced this directive by sending it out to all of their staff and by telling various members of the community, especially the senior club members, that BARBARA GRASSINI was not permitted on any Township property, and that she would no longer be allowed to participate in helping the senior club members with their events on Township property. A Township secretary gave the memo to BARBARA GRASSINI. Said memo is attached hereto and made a part hereof as Exhibit C. This memo shows the Township's intent to enforce the above mentioned directive to ban BARBARA GRASSINI from Township property.

15. As a result of having been given the memo and the communication with Sue Cox, BARBARA GRASSINI could not and did not attend Township public meetings, even though she had regularly attended those meetings over the last fifteen years.

16. As a result of the communication with Sue Cox, the memo being given to BARBARA GRASSINI, and as a result of the memo being circulated through the community, especially the senior citizens, BARBARA GRASSINI could not and did not attend or participate in any of the senior citizens social programs, including banquets, Christmas parties, picnics, and luncheons.

17. Because of BARBARA GRASSINI's fifteen year involvement in Township functions, especially in the senior citizens group, several hundred people, including several senior club members asked BARBARA GRASSINI to attend their functions on

Township property. BARBARA GRASSINI said that she could not attend any of those activities and in fact did not attend any of those activities because the directive banned her from Township property.

18. The above mentioned policy prevented the Plaintiff, BARBARA GRASSINI, from taking part in her constitutionally protected activities held on the public property of DuPage Township.

These paragraphs show that Barbara Grassini had opportunities to exercise her First Amendment rights of free assembly and association on township property which opportunities Barbara Grassini lost as a result of the township's memo. Such lost opportunities constitute loss of First Amendment rights "in their most pristine and classic form" **Memphis Community School District v. Stachura**, 106 S. Ct. 2537 (1986). The Illinois court's opinions contradict this opinion.

In addition, from a reading of the Appellate Court's opinion, it appears that the Appellate Court held that since Grassini was not in fact denied access by the township to any property, then there was no "actual deprivation". This conclusion contradicts this court's opinion in **N.A.A.C.P. v. Button**, 83 S. Ct. 328, 338 (1963). In that case, this Supreme Court stated as follows:

> "It makes no difference that the instant case was not a criminal prosecution and not based on a refusal to comply with licensing requirement. The objectionable quality of vagueness and over breath, does not depend on absence of powers,

but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanction."

Finally, in **Leatherman v. Tarrant County**, 113 S. Ct. 1160, 1163 (1994), this court held that there is no "stringent pleading requirement" in civil rights cases alleging municipal liability under Section 1983. Grassini argued this case in the Illinois courts, but once again those courts refused to follow it.

II. THE DECISION BELOW SQUARELY CONTRADICTS THE SEVENTH CIRCUIT COURT OF APPEALS DECISION AND ESMAIL V. MCCRANE, 52 F.3d 176.

In her complaint, Barbara Grassini alleges that her Fourth Amendment Equal Protection Rights were violated by the memo. In the court's below, Grassini relied on the opinion of the Seventh Circuit Court of Appeals in **Esmail v. McCrane**. In that case, Plaintiff Esmail alleged that Naperville Mayor McCrane retaliated against him for "Esmail having withdrawn political and financial support from the mayor after Esmail learned that the Mayor was trying to destroy his business".

The district court dismissed Plaintiff s Complaint. In reversing the Seventh Circuit court of Appeals stated:

The distinctive feature here, which the district judge did not discuss is that the unequal treatment is alleged to have been the result solely of a vindictive campaign by the mayor.

(2) Our decision in **Ciechon v. City of Chicago**, 686 F.2d 511 (7th Cir. 1982), holds that such conduct, so motivated, violates the equal protection clause; and the holding, although it has rarely brought ultimate victory to a plaintiff, does not stand alone. **Vukadinovich v. Board of School Trustees**, 978 F.2d 403, 414 and n. 9 (7th Cir. 1992); **Chicago Cable Communications v. Chicago Cable Commission**, 879 F.2d 1540, 1547 (7th Cir. 1989) **Yeradi's Moody Street Restaurant v. Board of Selectmen**, 878 F.2d 16, 21 (IL Cir. 1989); **Zeigler v. Jackson**, 638 F.2d 776, 779 (5th Cir. 198 1). The principle it states is no doubt subject to abuse by persons whose real complain is selective prosecution in the sense that is not recognizable in suits to enforce the equal protection clause. But it strikes us as sound. If the power of government is brought to bear on a harmless individual merely because a powerful state or local official harbors a malignant animosity toward him, the individual ought to have a remedy in federal court. This was implied by the Supreme Court in **City of Cleburne v. Cleburne Living Center, Inc.**, supra, 473 U.S. at 446-47, 105 S. Ct. at 3257-58, when it pointed out that some objectives of state action simply are illegitimate and will not support actions challenged as denials of equal protection. Although the courts of Illinois seem to have been perfectly ready, willing, and able to protect Esmail against Mayor McCrane, powerful state or local

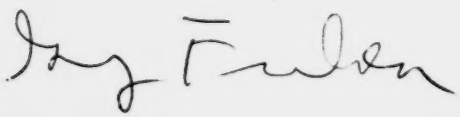
officials are not infrequently above to overawe state or local courts... What it does require, and what **Esmail** may or may not be able to prove, is that the action taken by the state, whether in the form or prosecution or otherwise, was a spiteful effort to "get" him for reasons wholly unrelated to any legitimate state objective. 53 Fed. 2d at 179-180.

Even though it is obvious that the **Esmail v. McCrane** case applies to the Grassini facts, the Illinois courts refused to follow and apply it.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT

87788

SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 6, 1999

Mr. Theodore J. Bednarek
Theodore J. Bednarek & Associates
63 W. Jefferson St., Suite 201
Joliet, IL 60432

No 87788 - Barbara Grassini, petitioner, v. DuPage Township, etc., et al., respondents. Leave to appeal, Appellate Court, Third District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1999.

STATE OF ILLINOIS

3-98-0568
Grassini v. DuPage Twp.

APPELLATE COURT THIRD DISTRICT

OTTAWA

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord one Thousand Nine Hundred and Ninety Six, within and for the Third District of Illinois:

Present -

HONORABLE PEG BRESLIN, Presiding Justice X

HONORABLE WILLIAM E. HOLDRIDGE, Presiding Justice

HONORABLE TOM M. LYTTON, Justice X

HONORABLE MICHAEL P. MC CUSKEY, Justice X

HONORABLE KENT SLATER, Justice

HONORABLE JOHN F. MICHELA, Justice

GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on May 7, 1996 the Opinion of the Court was filed in the Clerk's Office of said Court, in the words and figures following viz.:

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

NO. 3- - 95 - - 0616

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 1996

BARBARA GRASSINI,	)	Appeal from the
	)	Circuit Court
	)	of the 12th
	)	Judicial Circuit,
Plaintiff-Appellant,	)	Will County,
	)	Illinois
	)	
v.	)	No. 93 CH 7832
	)	
DUPAGE TOWNSHIP, a municipal corporation, MARGARET DANHOFF, Township Supervisor, ANN DRALLE, Trustee, PAUL DRDAK, Trustee, JEFF MERTZ, Trustee, FELIX GEORGE, Trustee and JUDITH BREDEWEG,	)	**Publ. In Full**
	)	
	)	Honorable
Defendants-Appellees.	)	Patrick M. Burns,
	)	Judge, Presiding.

"Not To Be Published"

PRESIDING JUSTICE BRESLIN delivered the opinion of the court:

The plaintiff, Barbara Grassini, brought suit against DuPage Township and several of its officials after they terminated her employment with the Township. The trial court dismissed Grassini's six-count complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 1992)). The primary question on appeal is whether DuPage Township had the authority to employ Grassini as township administrator under a four-year contract. We hold that, under the facts presented, the contract was without the Township's authority and therefore void ab initio. Accordingly, we affirm the trial court's dismissal of the counts based upon the contract. For reasons that follow, we also affirm the trial court's dismissal of the other counts, but remand for the trial court to determine whether Grassini should be given leave to replead count VI.

FACTS

DuPage Township first employed Grassini in 1988 in a capacity that is not clear from the record. The terms and conditions of Grassini's employment were governed by a personnel policy manual, relevant portions of which we will discuss in the course of our analysis. In February 1993, Grassini

entered into a written employment contract with the Township through which she agreed to serve in the capacity of township administrator for a four-year period. As administrator, Grassini was to perform various duties under the direction of the township supervisor, including coordination of the township's daily business, coordination of payroll and personnel functions, recommendation of budgetary policies, and communication of township policies to departmental heads. The contract provided that Grassini's employment could be terminated only for various enumerated reasons. In addition, it expressly stated that its terms superseded the terms of the policy manual to which Grassini had been subject under her previous employment.

The township's board of trustees authorized the contract by resolution in February 1993; the township electors in turn approved the trustees' resolution in April 1993. Shortly thereafter, however, newly elected trustees, including a new township supervisor, replaced the trustees who authorized Grassini's contract. On May 5, 1993, the new trustees voted to terminate the contract and to discharge Grassini from her duties. In June 1993, anticipating this litigation, the new supervisor issued a memo to township employees instructing that Grassini

was not to be permitted to participate in any paid or volunteer activities on township property until the litigation was resolved.

Grassini brought a six-count complaint against the township and its trustees, including the supervisor. Count I alleged breach of the employment contract. Count II sought damages from the individual defendants under 42 U.S.C. S 1983, alleging that the same breach violated Grassini's right to due process under the 14th Amendment to the United States Constitution. Count III alleged breach of the policy manual; count IV sought damages under 42 U.S.C. S 1983 for the same breach. Count V sought further damages for the same breach alleged in count III. Finally, count VI sought damages under 42 U.S.C. § 1983 for an alleged interference with Grassini's rights under the 1st and 14th Amendments to the United States Constitution stemming from the memo which sought to bar her from participating in activities on township property.

The defendants brought a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure, alleging that the contract was ultra vires and therefore void ab initio. The trial court agreed with the defendants and dismissed all six counts with prejudice. Grassini appeals the dismissal of every

count except count V.

Scope of Review

A motion to dismiss under section 2-619 admits the legal sufficiency of a complaint but raises affirmative matter to defeat the claim. 735 ILCS 5/2-619(a)(9) (West 1992). Thus, all well-pleaded facts in a complaint are taken as true. Geick v. Kay, 236 III. App. 3d 868, 603 N.E.2d 121 (1992). A cause of action should not be dismissed under 2-619 unless it is apparent that no set of facts can be proven which would entitle a plaintiff to recover. Nielsen-Massey Vanillas, Inc. v. City of Waukegan, 276 III App. 3d 146, 657 N.E.2d 1201 (1995). A trial court's dismissal of a claim under section 2-619 is subject to de novo review. Jackson v. Shell Oil Co., 272 III. App. 3d 542, 650 N.E.2d 652 (1995).

Enforceability of Grassini's Employment Contract

The primary issue on appeal is whether Grassini's four-year employment contract was ultra vires and therefore void and unenforceable.

A township may exercise only those powers conferred

upon it by statute. DuPage Township's powers at the times relevant to this case were set forth in the Township Law of 1874 (60 ILCS 5/1-1 et seq. (West 1992)), which has since been repealed and reincorporated in large part into the Township Code (60 ILCS 1/1-1 et seq. (West Supp. 1996)). This reincorporation did not change those township powers relevant to this appeal; therefore, we will refer to the applicable sections of the Township Code in our discussion.

Section 85-10 of the Township Code provides that every town has corporate powers expressly granted or necessarily implied, and no others. 60 ILCS 1/85-10(a) (West Supp. 1996) The section further provides that townships may make all contracts necessary in the exercise of the their powers. 60 ILCS 1/85-10(d) (West Supp. 1996). In addition, section 100-5 provides that the township board may "employ and fix the compensation of township employees that the board deems necessary," exclusive of positions not relevant here. See 60 ILCS 1/100-5(a) (West Supp. 1996). The provision does not limit the period over which such employment contracts may extend. We must therefore determine whether such a limitation should be read into the Township Code.

The defendants essentially argue that townships may not enter into employment contracts for terms exceeding one year. This argument is based upon the requirements of the Municipal Budget Law (50 ILCS 330/1 et seq. (1992)), to which townships must conform. Section 3 of that law requires municipalities to appropriate funds to defray expenses on an annual basis and to specify the objects for which such appropriations are made. 50 ILCS 330/3 (West 1992).

In Diversified Computer Services, Inc. v. Town of York, 104 Ill. App. 3d 852, 433 N.E.2d 726 (1982), the court read section 3 of the Municipal Budget Law to forbid townships from executing contracts unless the expenditures to be made thereunder are first appropriated in full. The court thus held that a contract executed by a township assessor for the lease of computer equipment for a multi-year period was void ab initio.

The defendants claim that the Diversified court's rationale should likewise apply to employment contracts. We are not persuaded by that decision, however, and decline to apply it in the case at bar. The Municipal Budget Law, in requiring townships to appropriate funds to specific purposes on an annual

basis, does not thereby forbid townships from contractually incurring debts to be paid in the future. To say otherwise would be to equate the act of contracting to pay a sum in the future with the act of appropriating, when in fact the acts differ from one another. Thus, although there may be sound policy reasons for restricting the ability of townships to incur long-term obligations, those reasons do not find their genesis in the Municipal Budget Law.

A more persuasive reason for limiting the ability of townships to contract for multi-year periods may be drawn from the supreme court's decision in Millikin v. County of Edgar, 142 Ill. 528 (1892). In that case, a county board of supervisors employed the keeper of a poor house under a three-year contract, notwithstanding that the board members themselves were only elected for a one-year period. The governing statute in Millikin granted the board the authority to hire such a person, but did not expressly limit the number of years for which the employment might extend. The court reasoned that it would do violence to the statute to allow an elected board to inhibit its successor's ability to supervise care for the unfortunate by tying its hands with respect to relevant employment decisions. The

court therefore grafted into the statute the limitation that employment agreements of the sort at issue were void unless limited to the period of service of the then-current board. Millikin, 142 Ill. at 533.

The Millikin decision stands for the broad proposition that it is contrary to the effective administration of a political subdivision to allow elected officials to tie the hands of their successors with respect to decisions regarding the welfare of the subdivision. This principal has not been confined in application to county governments and their administration of poor houses. See, e.g., Deyo v. Commissioner of Highways of Sheridan, 256 Ill. App. 3, 7-8 (1930) (highway commissioner lacked authority to incur debts on town's behalf extending beyond his term of office). Indeed, it has found expression with respect to employment decisions in section 8-1-7(b) of the Municipal Code, which provides in part:

> "Notwithstanding any provision of this Code to the contrary, the corporate authorities of any municipality may make contracts for a term exceeding one year and not exceeding the term of the mayor or president holding office at the

> time the contract is executed, relating to: (1) the employment of a municipal manager, administrator, health officer, land planner ***."
> 65 ILCS 5/8-1-7(b) (West 1992).

Consistent with Millikin, the legislature recognized through section 8-1-7(b) that the positions enumerated therein are important to the effective administration of municipalities, so that each succeeding authority, in concert with the municipality's chief executive officer, should determine for itself who should serve in such positions.

We see no reason why the principle set forth in Milliken and espoused in the Municipal Code should not likewise apply to townships. Section 100-5 of the Township Code provides that township boards may "employ and fix the compensation of township employees that the board deems necessary." We take this to mean that each successive township board should decide for itself which employees are necessary and what their compensation should be. Therefore, we hold that a township board may not contract to employ persons for terms greater than the period for which the board making the decision has left to serve.

In the case at bar, Grassini's contract called for her to serve as administrator for a four-year period. The trustees and supervisor who authorized the contract on the Township's behalf were replaced a few months after the contract was signed. Because Grassini's employment was to extend beyond these officials remaining period of service, the contract was outside the Township's authority and thus void ab initio. Moreover, this defect was not cured by the electors' vote to approve the board's decision; nothing in the Township Code gives electors the authority to approve void contracts. Accordingly, Grassini cannot enforce her employment contract against the Township.

The next issue we must address is whether the trial court properly dismissed count II, in which Grassini seeks relief under 42 U.S.C. § 1983 against the individual defendants for their decision to terminate her employment contract.

Section 1983 provides that a person who, under color of state law, subjects another to a deprivation of his or her rights under the United States Constitution shall be liable for the deprivation. 42 U.S.C. § 1983 (1994). The 14th Amendment to the Constitution protects persons from the deprivation of

property interests without due process of law. U.S. Const. amend. XIV. A person may have a property interest in continued public employment if State law has created an expectation that the relationship will continue. Bishop v. Wood, 426 U.S. 341, 96 S. Ct. 2074, 48 L.Ed.2d 684 (1976).

Grassini claims that her employment contract created a property interest and that the individual defendants deprived her of that interest in violation of her due process rights. In light of our holding that the contract was void under Illinois law, the contract created no property interest to which the protections of the 14th Amendment would attach. Therefore, the trial court properly dismissed Grassini's § 1983 claim as set forth in count

Enforceability of the Personnel Policy Manual

We now consider the propriety of the trial court's dismissal of counts III and IV. In these counts, Grassini seeks relief based upon the defendants' alleged breach of the personnel policy manual which was in effect prior to the time Grassini contracted to become township administrator. Count III alleges common law breach of contract and count IV seeks

relief under 42 U.S.C. § 1983.

The gravamen of both counts appears to be that the policy manual created an enforceable contractual agreement whereby Grassini could only be fired on the basis of cause and that the defendants summarily terminated her without a proper hearing to determine cause. The defendants claim that this contract, like Grassini's contract to become administrator, was ultra vires and thus unenforceable. Neither party provides a satisfactory account of the manual's legal effect; nonetheless, the defendants are correct that the manual created no right in Grassini which she could enforce against them.

The policy manual provided that Grassini's employment could be terminated due to a staff reduction or due to "unsatisfactory job performance and/or commission of acts contrary to professional ethics." The manual did not otherwise state the period for which the employment was to extend. It is central to Grassini's claims under counts III and IV that, on the basis of these facts, the manual gave her a right to continued employment absent the occurrence of one of the enumerated bases for termination.

We cannot accept Grassini's construction of the manual.

As we have previously held,, the Township Code does not permit township boards to execute employment contracts which extend beyond the board members' terms of office. We must construe the manual as if the parties were aware of this requirement at the time the manual went into effect. See Local 165, International Brotherhood of Electrical Workers, AFL-CIO v. Bradley, 149 Ill App. 3d 193, 499 N.E.2d 577 (1986)(contracts must be construed in light of existing laws).

In view of the Township Code's requirements, we must read an implied term into the manual by which a succeeding board could terminate Grassini's employment in the exercise of its authority under section 100-5 (60 ILCS 1/100-5(a) (West Supp. 1996)). Construed as a whole, then, the manual gave Grassini the right to continued employment for the period of the then-sitting board's tenure, during which time she could be fired only for cause after a hearing. Each succeeding board, however, had the option to terminate Grassini's employment at its discretion and could do so without conducting a hearing on the matter.

Based upon our construction of the manual, Grassini has no cause of action for breach of contract based upon the

defendants' decision to fire her without a hearing. Therefore, the trial court was correct to dismiss count III with prejudice. In addition, the manual created no property interest in Grassini which she could vindicate under 42 U.S.C. § 1983. The trial court accordingly was correct to dismiss count IV.

Deprivation of Grassini's Rights Under 1st and 14th Amendments

The final question for our consideration is whether the trial court properly dismissed count VI of Grassini's complaint. In count VI, Grassini seeks relief under 42 U.S.C. § 1983 based upon an alleged deprivation of her rights under the 1st and 14th Amendments to the federal Constitution. Specifically, the count alleges that the Township adopted a policy of refusing to allow Grassini to participate in paid or volunteer activities on Township property during the pendency of this litigation. The count alleges further that this policy violated Grassini's rights to free speech, free association, peaceable assembly, due process, equal protection, and her right to petition the government for redress of grievances. See U.S. Const. Amend. 1, Amend XIV.

At the outset, we note that the defendants raised no affirmative matter in the trial court which would defeat this claim. Thus it was not proper for the trial court to dismiss this claim pursuant to section 2-619 of the Code of Civil Procedure. Nonetheless, it is obvious from the face of the complaint that Grassini has not alleged sufficient facts to state a cause of action under § 1983 for a deprivation of her rights. Therefore, we will treat the trial court's dismissal of count VI as a dismissal for failure to state a cause of action under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 19922). See Nielsen-Massey Vanillas, Inc. v. City of Waukegan, 276 Ill. App. 3d 146, 657 N.E.2d 1201 (1995)(appellate court may affirm trial court's ruling for any reason appearing in the record).

A plaintiff seeking damages under 42 U.S.C. § 1983 must allege an actual deprivation of rights resulting from the defendants' acts; mere possibility of remote or speculative injury or invasion of rights is insufficient. Reichenberger v. Pritchard, 660 F.2d 281 (7th Cir. 1981). Moreover, the mere attempt to deprive someone of his or her rights is not generally actionable under § 1983. Andree v. Ashland County,

818 F. 2d 1306 (7th Cir. 1987).

In this case, Grassini pleads no facts showing that her rights under federal law were infringed as a result of the policy in question. There is no allegation, for example, that Grassini was denied access to Township property despite her desire to use it. Nor is there any factual allegation to suggest that the Township threatened to enforce the policy. In the absence of any allegation tending to show that Grassini was in fact harmed by the policy, she cannot maintain an action under § 1983.

Although we affirm the dismissal of count VI, it may be that Grassini can allege facts to cure the count's defects. Therefore, we remand for the trial court to determine whether Grassini should be given the opportunity to amend count VI. See Coleman v. Hinsdale Emergency Medical Corp., 108 Ill. App. 3d 525, 439 N.E. 2d 20 (1982) (although appellate court may affirm on any basis found in record, it would be unfair to do so with prejudice on basis of correctable pleading defect).

For the foregoing reasons, we affirm the judgment of the circuit court of Will County. The cause is remanded for the court to consider whether Grassini should be given leave to amend count VI.

Affirmed and remanded.

LYTTON and McCUSKEY, JJ., concur.

STATE OF ILLINOIS,)
APPELLATE COURT,) ss.
THIRD DISTRICT,)

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete copy of the opinion of the said Appellate Court in the above-entitled cause, now of record in this office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court at Ottawa, this 7th day of May in the year of our Lord one thousand nine hundred and ninety-six.

_____

Clerk of the Appellate Court

STATE OF ILLINOIS

3-98-0568
Grassini v. DuPage Twp.

APPELLATE COURT THIRD DISTRICT OTTAWA

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord One Thousand Nine Hundred and Ninety-Nine, within and for the Third District of Illinois:

Present -

HONORABLE WILLIAM E. HOLDRIDGE, Presiding Justice

HONORABLE KENT SLATER, Justice X

HONORABLE THOMAS J. HOMER, Justice

HONORABLE PEG BRESLIN, Justice X

HONORABLE TOM M. LYTTON, Justice

HONORABLE JUDITH E. KOEHLER, Justice X

GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on April 20, 1999 the Order of the Court was filed in the Clerk's Office of said Court, in the words and figures following viz:

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

No. 3--98--0568

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 1999

BARBARA GRASSINI,	)	Appeal from the Circuit Court
	)	for the 12th Judicial Circuit
Plaintiff-Appellant,	)	Will County, Illinois
	)	
v.	)	
DUPAGE TOWNSHIP, a Municipal Corporation; MARGARET DANHOF, Township Supervisor; ANN DRALLE, Trustee; FELIX GEORGE, Trustee; and JUDITH BREDEWEG,	)	No. 93 CH 7832
	)	Honorable Frederic S. Carr, Jr.
Defendants-Appellees	)	Presiding Judge

ORDER **"Not To Be Published"**

The plaintiff, Barbara Grassini, appeals the Will County circuit court's dismissal of her amended complaint arising under section 1983 (42 U.S.C. 1983 (1994)) in which she alleges that the defendants, DuPage Township (Township), the township supervisor, and the trustees violated her first and fourteenth amendment rights (U.S. Const., amends. I, XIV). The circuit court dismissed the amended complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619 (West 1992)), concluding that the plaintiff failed to allege an actual deprivation of her constitutional rights. In determining whether the circuit court erred, we must decide the following question: Did the plaintiff's amended complaint allege facts sufficient to demonstrate a deprivation of rights, under color of law, guaranteed under the first and fourteenth amendments of the United States Constitution under section 1983? Because we conclude that the circuit court did not err, we affirm.

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[1] In an affidavit filed in open court and included in the record, Danhof testified that the memorandum was an interoffice memo directed to Township employees only, that it was never directed to the plaintiff, and that the Township "did not request, direct, require, or authorize any township employee to provide the memo to the plaintiff or to tell the plaintiff that she was "not to come onto township property, and that if she did, she would be stopped."

FACTS

Defendant Township terminated the plaintiff's employment as township administrator in May 1993. Defendants Margaret Danhof, the township supervisor, and Judith Bredeweg, transition team leader, sent a memorandum to Township office staff that read: "On advice from the Township attorney who has been informed that a lawsuit will be filed against the Township Supervisor and Board of Trustees, effective June 11, 1993, Barbara Tuttle-Grassini is not allowed to participate in any paid or volunteer activity held on DuPage Township property. This memo will be in effect until all litigation has been resolved." Danhof did not send a copy of the memo to the plaintiff.[1] A Township secretary gave the plaintiff a copy of the memo and she and another secretary told the plaintiff about the memo. The plaintiff subsequently filed, a six-count complaint against the Township, the township supervisor and the trustees.

The circuit court dismissed all six counts and this court affirmed. Grassini v. Du Page Township, 279 Ill. App. 3d 614,

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[2] The plaintiff did not appeal the dismissal of count V of her complaint.

[1] Defendants originally sought to dismiss under both sections 2-615 and 2-619 but in their reply brief asked that the section 2-615 motion be stricken and that only the section 2-619 motion be considered.

623, 665 N.E.2d 860, 866 (1996)[2]. However, in affirming the dismissal, the appellate court concluded that, as to count VI of the complaint, in which the plaintiff alleged a violation of her civil rights under section 1983, the plaintiff had failed to allege sufficient facts to state a claim. Grassini, 279 Ill. App. 3d at 623, 665 N.E.2d at 866. This court remanded the action to the trial court to determine whether the plaintiff should be given the opportunity to amend the complaint as to count VI. Grassini, 279 Ill. App. 3d at 623, 665 N.E.2d at 866.

On remand, the plaintiff filed an amended complaint on count IV seeking damages under section 1983 for alleged injuries caused by the dissemination of the memorandum. The defendants brought a motion to dismiss pursuant to section 2-619 asserting that the plaintiff failed to allege an actual deprivation of rights[3]. 735 ILCS 2-619 (West 1992). The circuit court granted the defendants' motion to dismiss, concluding that the plaintiff had failed to allege an actual deprivation of her constitutional rights. The plaintiff now appeals.

ANALYSIS

A motion to dismiss under section 2-619 admits the legal

sufficiency of a complaint but raises affirmative matter to defeat the claim. 735 ILCS 5/2--619(a)(9)(West 1992). All well-pleaded facts in the complaint and incorporated exhibits are taken as true. Geick v. Kay , 236 Ill. App. 3d 868, 603 N.E.2d 121, 125 (1992) . A cause of action should not be dismissed under section 2-619 unless it clearly appears that no set of facts can be proven that will allow a plaintiff to recover. Neilsen-Massey Vanillas, Inc. v. City of Waukegan, 276 Ill. App. 3d 146, 151, 657 N.E.2d 1201, 1205 (1995). Accordingly, our review of a section 2-619 dismissal is *de novo*. Jackson v. Shell Oil Co., 272 Ill. App. 3d 542, 546, 650 N.E.2d 652, 654 (1995).

Section 1983 establishes a "species of tort liability" to redress deprivation, under color of law, of rights, privileges and immunities secured by the United States Constitution. Memphis Community School District v. Stachura, 477 U.S. 299, 305, 91 L. Ed. 2d 249, 257, 106 S. Ct. 2537, 2542 (1986). The initial inquiry in a section 1983 claim is "whether the plaintiff has been deprived of a right secured by the Constitution and laws of the United States." Reichenberger v: Pritchard, 660 F.2d 280, 284-85 (7th Cir. 1981) Section 1983 requires the

deprivation of a clearly established right. R & V Pine Tree, Inc. v. The Village of Forest Park, 947 F. Supp. 342, 344 (1996). The plaintiff must allege more than a mere possibility of remote or speculative injury or invasion of rights; he must allege an actual deprivation of rights resulting from the defendant's act. Reichenberger, 660 F.2d at 284. The mere attempt to deprive someone of his or her rights is not generally actionable under section 1983. Andree v. Ashland County 818 F.2d 1306, 1311 (7th Cir. 1987).

The plaintiff attempts to cure the defects that this court found in her original complaint by alleging that the memo encapsulated a Township policy of retaliation against her for her decision to take action against the Township for terminating her employment. She alleges that the enforcement, or the threat of the policy's enforcement, prevented her from exercising her constitutional rights to participate in paid or volunteer activities on public township property.

The plaintiff alleges that issuance of the memo resulted in a deprivation of her fourteenth amendment substantive and procedural due process rights. She argues that under section 60 of the Illinois Township Code (Code), she was "entitled" to use

and enjoy Township property as was any other citizen and that she had "a statutory right and entitlement" to contract for and lease Township property. 60 ILCS 1/150-60 (West 1996). "Property interests *** are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law***." Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577, 33 L. Ed. 2d 548, 561, 92 S. Ct. 2701, 2709 (1972). Section 60 of the Code reads, in pertinent part:

> "Subject to the reasonable rules and regulations of the board of managers, the community buildings shall be for the free use and benefit of the inhabitants of the township for lectures, concerts, free amusements and entertainments and all other general educational purposes. The annual township meetings and other public assemblies may be held in the buildings. The Board of Managers may temporarily lease the community building when not in use for public purposes, for any reasonable and legitimate

private use on terms deemed reasonable and proper." 60 ILCS 1/150-60 (West 1996).

When interpreting a statute, [t]he plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters'." United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242, 103 L. Ed. 2d 290, 299, 109 S. Ct. 1026, 1031 (1989) quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571, 73 L. Ed. 2d 973, 980, 102 S. Ct. , 3245 (1982) . In this case, we read the plain language of the statute to provide the board of managers with discretionary powers whereby it "may" lease the community property subject to reasonable and legitimate limitations.

The plaintiff also contends that she was deprived of her first amendment rights to petition the government for redress of grievances, free speech, free assembly and free association.

The first amendment guarantees of freedom of speech, assembly and right to petition to the government are not identical, but they are inseparable, and the government may not destroy or erode those rights by indirect restraints [citations].

United Mine Workers of America v. Illinois Bar Association, 389 U.S. 217, 221, 19 L.Ed 2d 426, 430, 88 S. Ct. 353, 355 (1967). The first amendment guarantees the right to express ideas publicly. People ex rel. Difanis v. Barr, 78 Ill- App. 3d 842, 847, 397 N.E. 895, (1979). "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. [citations]." Grayned v. City of Rockford, 408 U.S. 104, 115, 33 L. Ed. 2d 222, 231, 92 S. Ct. 2294. This right may not be restricted except for "weighty purposes." Grayned, 408 U.S. at 115, 33 L. Ed. 2d at 231, 92 S-Ct. at 2302. The plaintiff alleges that the township memorandum violated her freedom of assembly because she could not attend public meetings or senior center activities. However, the memorandum itself does not support the allegations. It does not state that the plaintiff is not allowed in public buildings or on township property. As to the plaintiff's right to the use and enjoyment of Township property, the plaintiff was not denied this right. The memo explicitly states that the plaintiff will not be "allowed to

participate in any paid or volunteer activities on Township property." Even if, as the plaintiff urges, section 60 can be read to create a constitutionally protected property right or entitlement to use of Township property, the plaintiff does not allege in her complaint that she attempted to contract with or enter into a lease with the Township but was denied because of the existence of the memo.

Turning to the deprivation of the plaintiff's right or entitlement to participate in volunteer activities on Township property, there, of course, first must be such a right. We have not uncovered any right to volunteer or be employed for social events at a government-sponsored senior center. The loss of a benefit or privilege for engaging in speech of public concern may be of less consequence than lost employment; the loss of a volunteer position is "equally egregious in the eyes of the Constitution because a person is being punished for engaging in protected speech." Guy v. State of Illinois, 958 F. Supp. 1300, 1309-10, (N.D. Ill. 1997) quoting Hyland v. Wonder, 972 F.2d 1129, 1134, 1135 (9th Cir. 1992) cert. denied, 508 U.S. 908, 113 S. Ct. 2337, 124 L.Ed.2d (1993). Whether speech in that circumstance is constitutionally protected is again determined

by whether it is a matter of public concern. As already noted, in this case the plaintiff's complaint centered on her right to continued employment with the Township. It was, we have concluded, personal to her and not a matter of public concern. The plaintiff likewise fails to allege that she attempted to volunteer for any activity and that the Township turned away her attempt. The plaintiff has always been free to attend and participate in any public assemblies or activities on township property of any designation, and the deprivation that she complains of do not put at issue any rights to engage in expressive activities or speech or deprivation of such rights. The plaintiff has not alleged the expressive activity which was curtailed and this court is not required to "strain [so] far to imagine a first amendment violation." R & V Pine Tree, 947 F. Supp. 342 at 344. We, therefore, conclude that she has not alleged a violation of any constitutionally protected right to volunteer for Township activities or Township-sponsored activities.

To state a claim for retaliation for exercising first amendment rights, a plaintiff must allege that the petition touched upon matters of public concern. Lashbrook v. Oerkfitz,

65 F.3d 1339, 1349 (7th Cir. 1995), citing GraV v. Lacke, 885 F.2d 399, 412 (7th Cir. 1989) . The seventh circuit has stated, "a dispute between an employer and employee is not necessarily a matter of public concern, [citation] especially where the employee's complaint is entirely personal in nature." Lashbrook, 65 F. 3d at 1350 (citing employee whistleblowing as an example of speech that would be considered a matter of public concern). The plaintiff did not include in her complaint any allegations as to when, where or on what subject she wished to speak only to be silenced by the Township. In fact, the plaintiff fails to allege a single incident in which she attempted to enter onto Township property for any reason, or in which she was turned away based upon the issuance of the memo. On the contrary, the plaintiff's original action was brought in response to the Township's termination of her employment contract. The plaintiff's complaint centered on whether the Township had the right to terminate her contract. The issue of the plaintiff's employment was of consequence to her, but not to the public at large. It was personal in nature. This court found that the employment contract created no property interest in the plaintiff and that the contract was properly terminated. Grassini,

279 Ill. App. 3d at 621, 665 N.E.2d at 865. Accordingly, we cannot conclude that her allegations rise to the stature of public concern.

The plaintiff alleges that the actions of two Township secretaries and the threat those actions created demonstrated the Township's enforcement of the policy. A policy can be created through "formal rules or understandings," whether written or unwritten, that are intended to be consistently followed under similar circumstances over time. Pembaur v. City of Cincinnati, 475 U.S. 469, 480, 106 S. Ct. 1292, 1298, 89 L. Ed. 2d 452, 463 (1986) . A policy can be created as well when a "particular course of action" is chosen and where the decision-maker "possesses final authority to establish municipal policy with respect to the action ordered." Pembaur, 475 U.S. at 481, 89 L. Ed. 2d at 464, 106 S. Ct. at 1299. The decision-makers cause a deprivation of rights when their decisions "affirmatively command that it occur. McNabola v. Chicago Transit Authority, 10 F. 3d 501, 510 (7th Cir. 1993). The court must look to state law to identify official policymakers. McNabola, 10 F. 3d at 510. Section 1983 liability cannot be imposed on a municipality by way of *respondent superior*.

Monell v. Department of Social Services, 436 U.S. 658, 691, 56 L. Ed. 2d 611, 636, 98 S. Ct. 2018; 2037 (1978). "The decisions of an employee without authorization to set official policy provide an insufficient basis for imposition of liability against the governmental entity under section 1983. McNabola, 10 F. 3d at 509. Section 1983 language "cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a torteasor. Monell, 436 U.S. at 692, 56 L. Ed. 2d at 636, 98 S. Ct. at 2036.

The plaintiff fails to allege that either the township supervisor or the transition team leader was a final decision-maker. There are no allegations in the complaint relating to their responsibilities or authority to set Township policy. The plaintiff merely makes conclusory allegations that the existence of the memo illustrates Township policy. Furthermore, the plaintiff's decision not to attend Township activities was her own. She made that decision after a Township secretary gave

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[4] Attached to the amended complaint are an affidavit and a letter in which two Township secretaries recount receiving the memo, passing information on to the plaintiff, and informing her that she was not to come onto Township property. They do no indicate that the Township authorized or ordered them to inform the plaintiff.

her a copy of the memo and after that secretary and another secretary told her of it.[4] The evidence does not suggest that the Township authorized the secretaries to set official policy. Neither did the Township authorize or order them to inform the plaintiff of the memo's existence. We perceive that such a threat of injury to the plaintiff is speculative and, therefore, we conclude she has not stated a claim.

CONCLUSION

In sum, we conclude that the circuit court did not err in dismissing the amended complaint alleging a section 1983 claim. After admitting all facts as true, the complaint did not allege sufficient acts to demonstrate a deprivation of constitutional rights under the first and fourteenth amendments of the United States Constitution. Accordingly, we affirm.

Affirmed.

KOEHLER, J., with BRESLIN

and SLATER, JJ., concurring.

STATE OF ILLINOIS,)
APPELLATE COURT,) ss.
THIRD DISTRICT)

As Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete copy of the opinion of the said Appellate Court in the above-entitled cause, now of record in this office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court at Ottawa, this 20th day of April in the year of our Lord one thousand nine hundred and ninety-nine.

_____

Clerk of the Appellate Court

STATE OF ILLINOIS)
) SS:
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT WILL COUNTY, ILLINOIS

BARBARA GRASSINI,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 93 CH 7832
	)	
DUPAGE TOWNSHIP, a Municipal Corporation, MARGARET DANHOF, Township Supervisor, ANN DRALLE, Trustee, PAUL DRDAK, Trustee, JEFF MERTZ, Trustee, FELIX GEORGE Trustee, and JUDITH BREDEWEG,	)	
	)	
Defendants.	)	

AMENDED COMPLAINT

NOW COMES the Plaintiff, BARBARA GRASSINI, by and through her attorneys , TROHA & BEDNAREK , LTD , and for her complaint against the Defendants, DUPAGE TOWNSHIP, a Municipal Corporation, MARGARET DANHOF, Township Supervisor, ANN DRALE, Trustee, PAUL CROAK, Trustee , JEFF MERTZ, Trustee, FELIX GEORGE, Trustee, and JUDITH BREDEWEG, states as follows:

PLAINTIFF'S EXIBIT B

1. This action is brought pursuant to 42 U.S.C . Section 1983 and 1988.

2. The actions taken by these Defendants were under color of state law.

3. That Defendant , MARGARET DANHOF , is the Township Supervisor .

4. The Defendants, ANN DRALLE, PAUL DRDAK, JEFF MERTZ, and FELIX GEORGE are Trustees of DuPage Township.

5. That the Plaintiff, BARBARA GRASSINI, resides at 1349 Brantwood Circle, Apt. 103, Naperville, Illinois.

6. That the Defendant, DUPAGE TOWNSHIP, is a Municipal Corporation with its principal place of business at 241 Canterbury Lane, Bolingbrook, Will County, Illinois

7. That at all times pertinent to this Complaint, the Plaintiff, BARBARA GRASSINI, was the Township Administrator for DuPage Township

8. That on May 5, 1993, the Defendants' terminated BARBARA GRASSINI's employment with the Township.

9. That before May 5, 1993, DUPAGE TOWNSHIP and MARGARET DANHOF entered into a contract which is

dated February 16, 1993. A copy of said contract is attached hereto and made a part hereof as Exhibit A.

10. That the Defendant, JUDITH BREDEWEG, is the DuPage Township Transition Team Leader.

11 . The Defendant, DUPAGE TOWNSHIP, has adopted a policy of retaliating against the Plaintiff, BARBARA GRASSINI, for her decision to take action against the Township for terminating her employment. This policy is to not allow BARBARA GRASSINI to participate in any paid or volunteer activity held on DuPage Township property. This policy is stated in the attached Exhibit which is marked as Exhibit B .

12. The Defendants, MARGARET DANHOF, Township Supervisor, ANN DRALLE, PAUL DRDAK, JEFF MERTZ, and FELIX GEORGE , as Township Trustees, and JUDITH BREDEWEG approved of this policy.

13. The Defendant, DUPAGE TOWNSHIP, acting through its Trustees, employees and agents, and Trustees, employees, and agents of the Township individually, intended to enforce the above referenced directive, to not allow BARBARA GRASSINI onto any Township property. The Township in fact enforced this directive by sending it out to all

of their staff and by telling various members of the community, especially the senior club members, that BARBARA GRASSINI was not permitted on any Township property, and that she would no longer be allowed to participate in helping the senior club members with their events on Township property. A Township secretary gave the memo to BARBARA GRASSINI. Said memo is attached hereto and made a part hereof as Exhibit C. This memo shows the Township's intent to enforce the above mentioned directive to ban BARBARA GRASSINI from Township property.

14. Furthermore, the Township and its administrators threatened to enforce, and in fact enforced the memo through its agents and employees, in particular, Sue Cox. Sue Cox told BARBARA GRASSINI that the memo would be enforced and that she should not come onto Township Property, and that if she did, she would be stopped. See attached affidavit marked as Exhibit D.

15. As a result of having been given the memo and the communication with Sue Cox, BARBARA GRASSINI could not and did not attend Township public meetings, even though she had regularly attended those meetings over the last fifteen

years.

16. As a result of the communication with Sue Cox, the memo being given to BARBARA GRASSINI, and as a result of the memo being circulated through the community, especially the senior citizens, BARBARA GRASSINI could not and did not attend or participate in any of the senior citizens social programs, including banquets, Christmas parties, picnics, and luncheons.

17. Because of BARBARA GRASSINI's fifteen year involvement in Township functions, especially in the senior citizens group several hundred people, including several senior club members asked BARBARA GRASSINI to attend their functions on Township property. BARBARA GRASSINI said that she could not attend any of those activities and in fact did not attend any of those activities because the directive banned her from Township property.

18. The above mentioned policy prevented the Plaintiff, BARBARA GRASSINI, from taking part in her constitutionally protected activities held on the public property of DuPage Township.

19. By adopting the above mentioned policy, the

Township and all the individual Defendants have violated BARBARA GRASSINI's constitutional rights as follows:

a. Her right to a Due Process Hearing guaranteed to her under the Fourteenth Amendment before her right to use public DuPage Township property is denied her.

b. Her right of Freedom of Speech guaranteed to her under the First Amendment.

c. Her right to peaceably assemble on public property guaranteed to her under the First Amendment.

d. Her right to petition the government, the local government, especially the government of the DuPage Township for grievances guaranteed to her under the First Amendment.

e. Deprived her of her rights under the Fourteenth Amendment, including her right as a tax payer to use public property and her right to Due Process of law and her right to equal protection of the laws.

20. As a result of the above mentioned violation of the Plaintiff 's constitutional rights, the Plaintiff suffered damages. She suffered emotional and mental anguish, and she was humiliated.

21. As a further result of the above mentioned violation of Plaintiff's constitutional rights, the Plaintiff suffered damages as follows:

a. Experienced high blood pressure which was treated by a physician.

b. She experienced moderate to severe depression which was treated by a physician.

c. She had sleep problems which were treated by a physician.

d. She had eating problems which were treated by a physician .

22. As a further result of the above mentioned violation of Plaintiff's constitutional rights, the Plaintiff was humiliated and she was stigmatized in the community. Plaintiff was a thirty year resident of the Township. She also received several awards during her service to the Township, including the distinguished service award. As a result of the memo banning Plaintiff from township property, her reputation among the community was ruined and several of her long-time friends in the community would not even speak to her.

23. As a further result of the above mentioned violation of Plaintiff's constitutional rights and as a result of her emotional, mental and physical problems, which occurred as a result of the above mentioned violations, Plaintiff could not work for approximately one year, and as a result, she was unable

to pay her mortgage and she lost her home to foreclosure.

WHEREFORE, Plaintiff, BARBARA GRASSINI, prays for a judgment against the Defendants, DUPAGE TOWNSHIP, a Municipal Corporation, MARGARET DANHOF, Township Supervisor, ANN DRALLE, Trustee, PAUL DRDAK, Trustee, JEFF MERTZ, Trustee, FELIX GEORGE, Trustee and JUDITH BREDEWEG, in a sum in excess of Fifteen Thousand Dollars and costs of suit.

BARBARA GRASSINI,
Plaintiff

By: _____

Her Attorney

MEMO TO OFFICE STAFF OF DUPAGE TOWNSHIP

FROM: SUPERVISOR DANHOF/TRANSITION TEAM LEADER BREDEWEG

SUBJECT: BARBARA TUTTLE-GRASSINI

DATE: JUNE 11, 1993

OWN ADVICE FOR THE TOWNSHIP ATTORNEY WHO HAS BEEN INFORMED THAT A LAWSUIT WILL BE FILED AGAINST THE TOWNSHIP SUPERVISOR AND BOARD OF TRUSTEES BY BARBARA TUTTLE-GRASSINI, EFFECTIVE JUNE 11, 1993, BARBARA TUTTLE-GRASSINI IS NOT ALLOWED TO PARTICIPATE IN ANY PAID OR VOLUNTEER ACTIVITY HELD ON DUPAGE TOWNSHIP PROPERTY. THIS MEMO WILL BE IN EFFECT UNTIL ALL LITIGATION HAS BEEN RESOLVED.

May 14, 1996

To Whom It May Concern:

In June 1993, I was employed as Administrative Assistant by the Town of DuPage, Illinois. I specifically remember receiving a memo addressed to staff from Supervisor Peggy Danhoff and Judy Brediwig, stating that Barbara Grassini was not allowed on the Township of Senior Center grounds nor could participate as a volunteer there. Both Township and senior center personnel received the memo. Senior club members were told. One very active member complained to me that day how unhappy she was the Barbara Grassini was not allowed at the center and could not participate as a volunteer there.

I received numerous communications in the form of inter-office memos from Supervisor Danhoff during this time. Like past memos, I took the memo on Barbara Grassini very seriously and never doubted Supervisors Danhoff's intentions to enforce the memo.

Sincerely,

Susan A. Paulsen
7607 Dove Drive
Schererville, IN 46375
(219) 794-9128

STATE OF ILLINOIS)
) SS:
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT WILL COUNTY, ILLINOIS

BARBARA GRASSINI,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 93 CH 7832
	)	
DUPAGE TOWNSHIP, a Municipal Corporation, et al.,	)	
	)	
	)	
Defendant.	)	

AFFIDAVIT

SUE COX, being first duly sworn on oath, deposes and says:

1. That I am the Affiant.

2. That I was an employee of DuPage Township when the attached memo was written about Barb Grassini not coming onto township property.

3. That this Affiant was made aware of the memo by township employees and township supervisors.

4. That this Affiant was told by township administrators that they intended to enforce the memo against Barbara Grassini and that they intended to keep Barbara Grassini off township property until after the litigation was completed.

5. That this Affiant told Barbara Grassini not to come onto township property and that if she did; she would be stopped.

(2)

No. 99-1466

RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

BARBARA GRASSINI,

Petitioner,

v.

DUPAGE TOWNSHIP, a Municipal Corporation, MARGARET DANHOF, Township Supervisor, ANN DRALLE, Trustee, FELIX GEORGE, Trustee, and JUDITH BREDEWEG,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

RESPONDENTS' BRIEF IN OPPOSITION

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18pp

LIST OF PARTIES

The appeal from the trial court was not perfected as to Paul Drdak and Jeff Mertz and they were not properly included as Respondents.

TABLE OF CONTENTS

Page

List of Parties i

Table of Contents ii

Table of Cited Authorities iii

Reasons for Denying the Writ 1

I. The Appellate Court Properly Held That The Petitioner Failed To Allege That The Township Deprived Her Of Any Constitutionally Protected Activities. 1

II. The Appellate Court Properly Found That The Rights Grassini Seeks To Protect Either Are Not Secured By The Constitution Or Were Not Infringed By The Memo. 5

III. The Illinois Courts Properly Dismissed Petitioner's Equal Protection Claim. 10

Conclusion 12

TABLE OF CITED AUTHORITIES

Page

Cases:

Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 548 (1972) 7, 8

Citizen's Action Fund v. City of Morgan City, 154 F.3d 211 (5th Cir. 1998) 5

Esmail v. McCrane, 52 F.3d 176 (7th Cir. 1995) 3, 10, 11, 12

In Re: Marriage of Wilson, 193 Ill. App. 3d 473, 549 N.E.2d 1348, 140 Ill. Dec. 476 (1990) 10

Knapp v. Whitaker, 757 F.2d 827 (7th Cir. 1985) . 5

Lashbrook v. Oerkfitz, 65 F.3d 1339 (7th Cir. 1995) 8, 9

Levin v. Civil Service Commission of Cook County, 52 Ill. 2d 516, 288 N.E.2d 97 (1972) 7

Macko v. Byron, 760 F.2d 95 (6th Cir. 1985) 3

Mazza v. Hendrick Hudson Central School District, 942 F. Supp. 187 (S.D.N.Y. 1996) 6

McNabola v. Chicago Transit Authority, 10 F.3d 501 (7th Cir. 1993) 5

Cited Authorities

Page

Memphis Community School District v. Statura, 477 U.S. 299, 06 S. Ct. 2537, 91 L. Ed. 2d 249 (1986) 1

Monell v. Dept. of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 611 (1978) 3, 4, 5

NAACP v. Button, 371 U.S. 415, 85 S. Ct. 328 (1963) 8, 9

Pembaur v. City of Cincinnati, 475 U.S. 469, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986) 5

Pleva v. Norquist, 36 F. Supp. 2d 839 (E.D. Wis. 1999) 11

Polyvend v. Puckorius, 77 Ill. 2d 287, 395 N.E.2d 1376, 32 Ill. Dec. 872 (1979) 7

Reichenberger v. Pritchard, 660 F.2d 280 (7th Cir. 1981) 2

Rheinheimer v. Village of Crestwood, 291 Ill. App. 3d 462, 684 N.E.2d 777, 225 Ill. Dec. 786 (1st Dist. 1997) 10

Rojicek v. Community Consolidated School District, 888 F. Supp. 878 (N.D. IL 1995) 3, 7

Village of Willowbrook v. Olech, 160 F.3d 386, affirmed, 120 S. Ct. 1073 (2000) 11, 12

Villanueva v. McInnis, 723 F.2d 414 (1984) 3

Cited Authorities

Page

Statute:

42 U.S.C. § 1983 ..... *passim*

United States Constitution:

First Amendment 2, 9

Fourteenth Amendment 2, 7

Rule:

Illinois Supreme Court Rule 341(e)(7) 10

REASONS FOR DENYING THE WRIT

I.

THE APPELLATE COURT PROPERLY HELD THAT THE PETITIONER FAILED TO ALLEGE THAT THE TOWNSHIP DEPRIVED HER OF ANY CONSTITUTIONALLY PROTECTED ACTIVITIES.

This case does not warrant review by this United States Supreme Court. The Appellate Court of Illinois, Third District, gave Petitioner ample opportunity to state a claim for relief under 42 U.S.C. § 1983.

42 U.S.C. § 1983 creates " 'a species of tort liability' in favor of persons who are deprived of 'rights, privileges, or immunities' secured to them by the Constitution." *Memphis Community School District v. Statura*, 477 U.S. 299, 305, 106 S. Ct. 2537, 91 L. Ed. 2d 249 (1986). Petitioner's Section 1983 action fails because she has not suffered a deprivation. Further, the rights she seeks to protect are not secured by the Constitution, or have not been infringed. Even assuming that Petitioner has alleged a conspiracy by Respondents, Petitioner's due process and equal protection claims fail because Respondents took no steps in furtherance of an alleged conspiracy. Petitioner has, moreover, failed to allege the necessary elements of an equal protection claim.

The Petitioner alleged in her Amended Complaint that her due process and equal protection rights were infringed by an internal Township memo. (Petitioner's Appendix pp. 54-64) (hereafter as A-54-64) The memo stated that in light of Grassini's lawsuit against the Township arising out of its termination of her employment, she was "not allowed to participate in any paid or volunteer activity held on Township property." (A-62)

The Illinois Appellate Court found in its 1996 Opinion that Petitioner had not pled adequate facts to state a cause of action for a deprivation of her rights under the First and Fourteenth Amendments of the United States Constitution. (A-34) The Court held that Grassini failed to plead facts showing that her rights under federal law were infringed as a result of the policy in question. (A-34) To state a cause of action, Petitioner was required to plead, for example, that she was denied access to Township property despite her desire to use it, or that the Township threatened to enforce the policy, according to the 1996 opinion. (A-34)

The court remanded the case permitting Petitioner to replead. (A-34) The trial court dismissed the Amended Complaint. (A-39) In the Order before the Court, the Appellate Court affirmed, finding Petitioner had again failed to allege an actual deprivation of her rights. (A-39)

In order to state a cause of action under 42 U.S.C. § 1983 for violation of constitutional rights, a plaintiff must show an actual deprivation of the constitutional right by defendants. *Reichenberger v. Pritchard*, 660 F.2d 280, 281 (7th Cir. 1981). The *Reichenberger* court found the plaintiff's claim of "a presently actual threat of deprivation" to be insufficient. *Id.*

The Petitioner does not allege that any Respondent communicated a threat to her or took any action impacting her. She did not allege that she was denied access to the property or that the Township threatened to enforce the policy. Assuming that the allegations of the Complaint are that the Respondents developed a plan or conspiracy against Grassini, there is no allegation that the Respondents ever took a step in furtherance of the alleged conspiracy to Petitioner's detriment.

The gist of a cause of action under Section 1983 is the deprivation and not the conspiracy. *Rojicek v. Community Consolidated School District*, 888 F. Supp. 878, 884 (N.D. IL 1995). It is not enough for the plaintiff to prove the conspiracy without proving the deprivation as well. *Id.* An inchoate agreement, without more, does not result in a denial of rights. *Villanueva v. McInnis,* 723 F.2d 414, 418 (1984). Liability arises only when the execution of a government's policy inflicts an injury. *Monell v. Dept. of Social Services*, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 611 (1978). Here, Petitioner did not allege an execution of the purported plan by the Respondents. The alleged plan was, at most, an inchoate agreement, and did not act to deprive Grassini of any rights.

This defect is fatal to each of Petitioner's claims, whether under due process or equal protection. An allegation that defendants conspired to deprive plaintiff of equal protection requires an actual infringement of a constitutional right. *Macko v. Byron*, 760 F.2d 95, 96 (6th Cir. 1985). *Esmail*, on which Petitioner relies, states, "If the power of government is brought to bear on a harmless individual merely because a . . . local official harbors a malignant animosity toward him, the individual ought to have a remedy in federal court." *Esmail v. McCrane*, 52 F.3d 176, 179 (7th Cir. 1995). Here, the "power of government" was not brought to bear on Petitioner; the Township and individual Respondents never exercised their power in any way. There was no unequal treatment of the Petitioner, requisite to an equal protection claim, because the Respondents never took any step in furtherance of the alleged plan and therefore did not treat Petitioner unequally. No case has eroded the principle that some governmental action must be at the foundation of a constitutional challenge.

Grassini alleges that the Respondents threatened to enforce the memo through an employee of the Township. Grassini's Amended Complaint includes an affidavit by Suzanne Cox, who, according to the Amended Complaint, worked as a secretary for DuPage Township. The affidavit states, "That this Affiant told Barbara Grassini not to come onto Township property and that if she did, she would be stopped." (A-64)

The Appellate Court found Cox's statement was not the act of the Township or any individual Respondent. Attached to Respondent's Motion to Dismiss was the affidavit of Respondent, Margaret Danhof, stating the Township did not direct or authorize Cox to inform Grassini not to enter Township property. (C. Supp. Vol. IV) She states the memo was never directed to Petitioner and that the Township never requested or authorized any employee to provide a copy to Grassini. (C. Supp. Vol. IV) Suzanne Cox, who worked as a secretary, had no authority to enforce any Township policy regarding relations with former employees, including Barbara Grassini. She had no authority or permission to tell Barbara Grassini not to enter Township property, according to Danhof's affidavit.

The Appellate Court properly found that the Township is not liable for Cox's unauthorized actions. *Respondeat superior* liability will not suffice to impose Section 1983 liability on a municipality. It is only "when the execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts may be fairly said to represent official policy, inflicts the injury that the government as an entity is responsible under Section 1983." *Monell v. Dept. of Social Services*, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 611 (1978). Recovery from a municipal

entity is therefore limited to acts that are, properly speaking, acts of the "municipality" — that is, acts which the municipality has officially sanctioned or ordered. *McNabola v. Chicago Transit Authority*, 10 F.3d 501, 509 (7th Cir. 1993), *citing Pembaur v. City of Cincinnati*, 475 U.S. 469, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986). The plaintiff must establish not only a policy, but also that the official policy maker's decisions caused the deprivation of rights at issue by policies that affirmatively command that it occur. *Id.*, 10 F.3d at 510. As stated by the Court, Petitioner did not allege that the decision makers commanded or authorized Suzanne Cox to inform Grassini of the memorandum. Their decisions did not result in a deprivation. (A-51-52)

Suzanne Cox, as a secretary, was not one whose edicts could represent official policy. This unauthorized conduct by an employee could not constitute an act by the Township, and the Township is not responsible for it. Under *Monell*, the Appellate Court properly found that DuPage Township is not responsible for Cox's actions.

II.

THE APPELLATE COURT PROPERLY FOUND THAT THE RIGHTS GRASSINI SEEKS TO PROTECT EITHER ARE NOT SECURED BY THE CONSTITUTION OR WERE NOT INFRINGED BY THE MEMO.

In any action under Section 1983, the first step is to determine the exact contours of the underlying right said to be violated. *Citizen's Action Fund v. City of Morgan City*, 154 F.3d 211, 214 (5th Cir. 1998). The initial issue is one of law — whether plaintiff's claimed rights are constitutionally protected. *Knapp v. Whitaker*, 757 F.2d 827 (7th Cir. 1985).

Vague assertions of unfairness on the part of the government, without more, cannot be molded by the court into constitutional violations. *Mazza v. Hendrick Hudson Central School District*, 942 F. Supp. 187, 192 (S.D.N.Y. 1996).

Petitioner alleges that she was deprived of her right to volunteer at the Senior Services Center and to attend Township board meetings. She alleges the Board "policy is not to allow Barbara Grassini to participate in any paid or volunteer activity held on DuPage Township property." (A-56)

Attendance at a public meeting, however, is not a "paid or volunteer" activity and, therefore, was not within the meaning of the memo. Petitioner, thus, did not allege a deprivation of a claimed right to attend a board meeting based on the memo. The Appellate Court properly found that the memorandum does not support Petitioner's allegations that she was denied the use and enjoyment of Township property. (A-46) The Court properly found that the Petitioner has always been free to attend and participate in any public assemblies or activities on Township property of any designation . . . (A-48)

Petitioner claims her rights of free assembly and association, along with her First Amendment expressive activities, were infringed when she was "chilled" from volunteering at Senior Services events on Township property. (P. 11-12 of Plaintiff's Petition For Writ of Certiorari) The court found, however, Petitioner has no entitlement to work as a volunteer at the Township's senior services program, stating, "We have not uncovered any right to volunteer or be employed for social events at a government sponsored senior center." (A-47)

If a Section 1983 plaintiff does not have a protectable property or liberty interest, she is not entitled to the procedural safeguards guaranteed by the Due Process Clause of the Fourteenth Amendment and her due process claim is properly dismissed. *Rojicek v. Community Consolidated School District*, 888 F. Supp. 878, 884 (1995). "To have a property interest in a benefit, a person must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 548 (1972).

According to the Danhof affidavit, the Township sponsors and funds the senior programs at the Joseph and Sarah Levy Senior Center. These programs provide activities for Township seniors. The Township funds these programs and provides facilities, such as a garden and rent-free use of its building. (C. Supp. Vol. IV).

A public employee has no property right in public employment, which falls within the protection of the due process clause of either the State or Federal constitution. *Levin v. Civil Service Commission of Cook County*, 52 Ill.2d 516, 288 N.E.2d 97, 100 (1972). Government enjoys the unrestricted power to determine those with whom it will deal. *Polyvend v. Puckorius*, 77 Ill. 2d 287, 395 N.E.2d 1376, 32 Ill. Dec. 872 (1979). The Court properly found Petitioner did not suffer an actionable deprivation if she were barred from acting as a volunteer at a Township sponsored center.

Petitioner claims a deprivation of loss of speech. However, an interest in holding a job, whether paid or volunteer, is not itself a free speech interest. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 2708, 33 L. Ed. 5-8 (1972).

The Appellate Court properly found Petitioner failed to state a claim for retaliation. (A-49-50) In order to state a claim for retaliation for exercising First Amendment rights by petitioning the government for redress of grievances, a plaintiff must allege that the complaint touched upon matters of public concern. *Lashbrook v. Oerkfitz*, 65 F.3d 1339, 1349 (7th Cir. 1995). In *Lashbrook*, the court found that plaintiffs failed to state a claim for retaliation for plaintiff's prior law suit that challenged on due process grounds the defendant's firing of plaintiff and claimed the existence of a contract between the parties. The court held that a dispute between an employer and employee is not necessarily a matter of public concern, especially where the employee's complaint is entirely personal in nature. The court held that the complaint failed to state a cause of action because the civil suit was not an effort at whistle blowing or some other matter of concern to the public generally, but was rather concerned with plaintiff's private contractual dispute with the park district. This is consistent with the United States Supreme Court's finding that litigation, where it is used as a means of achieving equality for a particular group, and not merely as a means of resolving private disputes, constitutes a form of political expression. *NAACP v. Button*, 371 U.S. 415, 432, 85 S. Ct. 328 (1963). The litigation between the Petitioner and the Township was merely a private dispute and was not protected political expression.

Here, as in *Lashbrook*, the initial dispute between Petitioner and the Respondent was entirely personal to the Petitioner and revolved around whether she was properly terminated. As in *Lashbrook*, she contended the firing was in violation of a valid contract and that she was denied due process. The Illinois courts ruled against Petitioner on these issues. There were no matters of public concern in the case, such as whistle blowing. Therefore, Petitioner has failed to state a cause of action for retaliation, under *Lashbrook*.

Petitioner argues that although Respondents did not deny her access to Township property, she was chilled in exercising her constitutional rights. The Order did not discuss whether Petitioner's claim that she suffered a chilling effect constitutes a deprivation and did not discuss whether Petitioner waived the issue. Petitioner, however, waived the issue in the Appellate Court and it has not been preserved for review.

Petitioner cited no authority in the Appellate Court for the proposition that the allegation of a chilling effect states a cause of action for a deprivation of rights under Section 1983. She cited only *NAACP v. Button*, which does not address the issue whether such an allegation states a cause of action under Section 1983. 371 U.S. 415, 432, 85 S. Ct. 328 (1963). In *Button*, the Supreme Court found that a judicial decree could be reversed if it prohibited privileged exercises of First Amendment rights, whether or not the record disclosed that the petitioner had engaged in such conduct. 371 U.S. at 432. The case is not applicable to the issue whether Section 1983's requirement of a deprivation or denial of a right is satisfied by the allegation of a chilling effect on Plaintiff's exercise of rights.

Citation of authority is required under Illinois Supreme Court Rule 341(e)(7). An appellate argument without citation to relevant authority is waived. *Rheinheimer v. Village of Crestwood*, 291 Ill. App. 3d 462, 684 N.E.2d 777, 225 Ill. Dec. 786 (1st Dist. 1997). The Petitioner failed to address in the Appellate Court whether her allegations of a chilling effect are sufficient under Section 1983 to constitute a denial of rights, even though the trial court dismissed the Complaint for its failure to allege a deprivation. This issue has been waived under Illinois law, and has not been preserved for review.

III.

THE ILLINOIS COURTS PROPERLY DISMISSED PETITIONER'S EQUAL PROTECTION CLAIM.

Petitioner claims that the memorandum violated her equal protection rights, under *Esmail v. Mc Crane*, 52 F.3d 176 (7th Cir. 1995). She, however waived the argument in the trial court. The Amended Complaint, in enumerating the rights Petitioner claimed were violated, listed "equal protection." However, although Respondent's Motion to Dismiss sought dismissal of the entire Complaint, Petitioner never asserted in the trial court that her equal protection claim was viable. Her Response to the Motion to Dismiss did not refer at all to equal protection. (C217-218) She failed to bring the issue to the attention of the trial court. An objection to a Motion to Dismiss which is not raised in the trial court cannot be raised on appeal. *In Re: Marriage of Wilson*, 193 Ill. App. 3d 473, 549 N.E.2d 1348, 140 Ill. Dec. 476 (1990). Petitioner's equal protection claim was, therefore, waived under Illinois law. This issue has not been preserved for review.

Petitioner's Complaint is deficient, moreover, because she fails to make the requisite allegations for an equal protection claim. To state a cause of action for an equal protection claim, a plaintiff must allege that she has been treated differently from others similarly situated. *Village of Willowbrook v. Olech*, 120 S. Ct. 1073, 1074 (2000). To recover under the rationale of *Esmail*, an allegation that plaintiff was treated differently from others similarly situated is necessary. *Pleva v. Norquist*, 36 F. Supp. 2d 839, 850 (E.D. Wis. 1999) *citing Esmail v. Mc Crane*, 52 F.3d 176 (7th Cir. 1995). Here, the Petitioner does not allege that she was treated selectively, and therefore her equal protection claim fails.

Petitioner relies on the case, *Esmail v. Mc Crane*, 52 F.3d 176 (7th Cir. 1995), for her equal protection claim. There plaintiff alleged that the Mayor of Naperville denied equal protection by denying plaintiff's liquor license applications on the basis of trivial or trumped-up charges while maintaining a practice or policy of granting licenses to people who had engaged in similar conduct. The harassment consisted not only of denying the application for a liquor license, but also harassing the plaintiff and his employees with constant, intrusive surveillance; in causing the police to stop his car repeatedly; forcing him to undergo field sobriety tests, and in causing false criminal charges to be lodged against him. The court referred to this as "an orchestrated campaign of official harassment directed against him out of sheer malice." The court stated, "If the power of government is brought to bear on a harmless individual merely because a powerful state or local official harbors a malignant animosity toward him, the individual ought to have a remedy in federal court." 52 F.3d at 179.

The Petitioner does not allege "a malignant animosity" by Respondents, an essential element in *Esmail v. Mc Crane*, 52 F.3d 176, 179 (7th Cir. 1995). Similarly, Petitioner does not allege that Defendant harbored "substantial ill will" toward Petitioner, as in *Village of Willowbrook v. Olech*, 160 F.3d 386, affirmed, 120 S. Ct. 1073 (2000). Plaintiff fails to state a cause of action. The Appellate Court properly affirmed the trial court's dismissal of Petitioner's Amended Complaint.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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